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### Local Rent Control—An Experiment in Administrative Law

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# ST. JOHN'S LAW REVIEW

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## LOCAL RENT CONTROL — AN EXPERIMENT IN ADMINISTRATIVE LAW \* †

ON JUNE 30, 1947, a new Federal Rent Control Act came into effect.<sup>1</sup> The drive, which had begun sometime prior thereto, for the removal of federal price controls,<sup>2</sup> resulted naturally in a lessening also of rent control by Congress. It was inevitable that the stringent wartime rigorous maintenance, through the Office of Price Administration, of federal control over rents and eviction of tenants should be weakened as part of the general policy of Congress to taper all controls to a minimum. It was likewise inevitable that the special circumstances which obtained in various localities should be differently affected by this new national legislation.

So it was in the City of New York and in a number of other large cosmopolitan centers. There, the need for more rigorous control was still felt, for the housing shortages were more especially acute in these centers and the effort to meet these shortages by new construction was, for a number of reasons, not equal to the unprecedented demand.

Primarily, the new statute made but few vital changes<sup>3</sup>

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\* Because of the importance of this article, publication of the REVIEW was delayed in order that several pertinent recent decisions might be included.

† The author wishes to express his appreciation to Mary K. Burns, member of the legal staff of the Temporary City Housing Rent Commission, for her helpful assistance in the preparation of this article.

<sup>1</sup> 61 STAT. 193, 50 U. S. C. APP. § 1881 (Supp. 1947).

<sup>2</sup> 56 STAT. 23, § 2(b) (1942), as amended, 59 STAT. 306, 50 U. S. C. APP. § 902(b) (Supp. 1945).

<sup>3</sup> (A) Criminal sanctions applicable to violations of the Act were eliminated but violators could be held in contempt of court for disobeying an injunction or mandate requiring obedience to the Act.

(B) Contrary to the former practice, under the new Act the tenant was the only one authorized to sue the landlord for treble damages.

in rent regulation, but these changes were important and created many new problems which, at least in New York City, had to be dealt with governmentally. For example, the

(C) The area rent offices were divested of their jurisdiction over eviction proceedings. The entire subject being assigned to the local courts with specific limitations for grounds for evictions. Section 209 of the Housing and Rent Act of 1947 containing such limitations provides as follows:

(a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

- (1) under the law of the state in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;
- (2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;
- (3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;
- (4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or
- (5) the housing accommodations are nonhousekeeping, furnished housing accommodations located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any state or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided*, That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

(D) A landlord and his tenant could by voluntary lease agreement provide for an increase not in excess of 15% provided the lease was entered into prior to December 31, 1947, to become effective after July 1, 1947 and extended up to or after December 31, 1948.

complete decontrol of hotels<sup>4</sup> presented a special problem to the residents of New York City, for, in New York City alone there are some 500 hotels containing more than 50,000 tenants. If the hotel owners were permitted, in 1947, to increase rents to the level of competitive rates, many thousands of these tenants would have been unable to meet their obligations or to find other housing accommodations. Again, the transfer to the courts of the task of passing, in the first instance, upon applications for eviction of tenants on the numerous grounds permitted under the federal law almost immediately resulted in an enormous increase of eviction proceedings in the New York City Municipal Courts<sup>5</sup> which, if allowed to go unchecked, would have resulted in making many people homeless. So too, the decontrol of new buildings or remodelled structures had a like effect.

While the country as a whole was perhaps in a position to weather these restorations of the rights of landlords, in the City of New York, the problem was at once difficult and perilous to the health and safety of the community.

The Legislature of the State of New York was not in session on June 30, 1947, nor had it, during the brief session that preceded the effective date of the new Act, contemplated the consequences of the proposed federal action. It did, indeed, contemplate and provide for the complete cessation of federal control,<sup>6</sup> but the partial lifting of these controls left the people of the city remediless.

It was at this point that the government of the city was compelled to take action, and a series of local laws were

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(E) Hotels, including those having permanent residents were completely decontrolled, providing certain conditions and requirements were met.

(F) Certain classes of housing accommodations were made eligible for decontrol, *i.e.*, new buildings and remodeled structures.

<sup>4</sup> In defining "controlled housing accommodations" the Act excludes hotels referring to them as "... any establishment which is commonly known as a hotel in the community in which it is located, . . . occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bell-boy service. . . ." 61 STAT. 196, 50 U. S. C. APP. § 1892 (Supp. 1947).

<sup>5</sup> In June, 1947: 1,753 cases; July, 1947: 1,761 cases; August, 1947: 2,144 cases; September 1-17: 3,788 cases. These figures do not include eviction proceedings brought for the non-payment of rent.

<sup>6</sup> Laws of N. Y. 1946, c. 274, as amended, Laws of N. Y. 1947, c. 704.

enacted, primarily intended to deal with this emergency situation.<sup>7</sup> The creation of a municipal administrative agency to deal with this emergency problem and the formulation of rules and regulations for its conduct, and the review of its activities in the courts, is the subject matter of this paper.

The first of the local laws in point of time was Local Law No. 54, which created the Temporary City Housing Rent Commission and put the permanent guests in hotels, decontrolled under the Federal Act, under the protection of the newly appointed Commission. By the terms of the new law, rents were frozen as of June 30, 1947, and evictions, or exclusions from possession, could take place only after a certificate had been issued by the Commission.<sup>8</sup>

Subsequently, the City Council likewise enacted additional laws to protect tenants other than those living in hotels from the dangers of eviction, providing that except for the non-payment of rent, no tenant could be evicted and no proceeding to evict a tenant could be brought in any court without a certificate from the new Commission, except at the risk of criminal consequence.<sup>9</sup> The statutes limited specifically the grounds upon which the Commission was authorized to issue certificates, and these grounds were more favorable to the tenant than the grounds which were provided in the federal legislation.<sup>10</sup>

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<sup>7</sup> Local Laws 1947 (City of New York), No. 54, §§ U41-6.0, U41-7.0, U41-8.0, U41-9.0.

<sup>8</sup> Local Laws 1947 (City of New York), No. 54, § U41-6.0. This law prescribed three grounds upon which a tenant may be evicted from a hotel, rooming house or lodging house, or upon which a landlord may be given a certificate. Those grounds relate to:

- (a) Tenant's refusal to renew a lease;
- (b) tenant's refusal to permit the landlord access to his accommodations; and
- (c) the violation of the obligation of the tenancy or the commission of a nuisance.

<sup>9</sup> Each violation of an order or regulation of the Commission could subject the offender to punishment by a fine of \$500 or ninety days in prison, or both. Local Laws 1947 (City of New York), No. 66, § U41-7.0(k).

<sup>10</sup> The grounds upon which the Commission may issue Certificates of Eviction are:

- (a) The tenant is violating an obligation of his tenancy, other than the obligation to pay rent;

As soon as the Commission was organized; published its regulations, and commenced to function, it encountered, as is usual with all newly born administrative agencies, the problem of the constitutionality of the statute of its creation. And in the case of the City Rent Commission, the problem was further complicated by the broad language in which the local laws were phrased and the wide powers which were given to the Commission.

It was not long before the courts, in reviewing the acts of the Commission, were in disagreement both as to the constitutionality of the statute and their interpretation. A learned judge in the Second Department held,<sup>11</sup> for example, that the city laws were in conflict with state legislation and hence beyond the power of the city to enact,<sup>12</sup> and his views were in due course upheld by the Appellate Division of the Second Department.<sup>13</sup> Another judge, in the First Department,<sup>14</sup> found the Commission's action under Local Law 54 "brash and lawless," and was unable to see how the statute in question authorized the Commission to make the orders which had emanated from it. The specific determinations

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- (b) the tenant has an obligation to surrender possession of his apartment;
  - (c) the tenant is committing a nuisance which interferes substantially with the comfort or safety of other tenants or where the tenant is using the apartment for an immoral or illegal purpose or for other than living or dwelling purposes;
  - (d) the landlord seeks in good faith to recover possession of the apartment for his immediate and personal use and occupancy as housing accommodations subject to specified restrictions;
  - (e) the landlord seeks in good faith to recover possession for the immediate purpose of substantially altering, remodeling or demolishing in accordance with certain requirements which greatly limit the application of this section, because the landlord is required to show that the alteration, etc., is reasonably necessary to maintain safety of such buildings or structure or that the demolition will result in a greater number of apartments than were contained in the structure to be demolished or that the alteration will result in a greater number of apartments.

Furthermore, provisions are included which permit the tenant to remain in possession of a portion of the premises while the alterations or improvements are being made and which result in giving the tenant a pre-emptive right to occupancy.

<sup>11</sup> *Tartaglia v. McLoughlin*, 190 Misc. 266, 77 N. Y. S. 2d 31 (Sup. Ct. 1947).

<sup>12</sup> N. Y. CONST. Art. IX, § 12; CITY HOME RULE LAW § 11(2).

<sup>13</sup> *Tartaglia v. McLoughlin*, 273 App. Div. 821, 76 N. Y. S. 2d 305 (2d Dep't 1948).

<sup>14</sup> *Moukad v. Ross*, 191 Misc. 270, 77 N. Y. S. 2d 672 (Sup. Ct. 1948).

of the Commission were likewise set aside by the courts with embarrassing frequency, until it began to appear that almost every order made by the Commission could be reviewed in the courts as a matter of course and its reasonableness subjected to judicial scrutiny.<sup>15</sup> The whole history of administrative procedure and the development of the doctrine that administrative determinations which are within the four corners of the statutory authority, must be upheld, unless they were palpably arbitrary or unreasonable, seemed for a long time to have been ignored. The reasons for this adverse judicial attitude, being psychological, can only be left to conjecture.<sup>16</sup> Perhaps the courts were unfamiliar with administrative agencies of this character, created by municipal legislation. Again, the drive for decontrol, which had begun in Congress, had made people restive with the restoration of controls by municipal legislation and constituted a major inarticulate premise which resulted in judicial impatience with the action of the Commission.

Under these circumstances, though the immediate emergency had been met and the process of eviction had been

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<sup>15</sup> *Chapman v. Ross*, 118 N. Y. L. J. 1916 (Sup. Ct. December 30, 1947); *Matter of Keller v. Ross*, 119 N. Y. L. J. 708 (Sup. Ct. February 25, 1948); *Matter of Lawrence v. Ross*, 191 Misc. 88, 77 N. Y. S. 2d 540 (Sup. Ct. 1948); *LeCapria v. Ross*, 119 N. Y. L. J. 708 (Sup. Ct. February 25, 1948); *Matter of Caputa v. Ross*, 119 N. Y. L. J. 787 (Sup. Ct. March 2, 1948); *Matter of Boehner v. Ross*, 119 N. Y. L. J. 1017 (Sup. Ct. March 18, 1948); *Moukad v. Ross*, 191 Misc. 270, 77 N. Y. S. 2d 672 (Sup. Ct. 1948); *Matter of Grimeisen v. Ross*, 119 N. Y. L. J. 1368 (Sup. Ct. April 13, 1948); *Matter of Arnoff v. Ross*, 191 Misc. 469, 78 N. Y. S. 2d 425 (Sup. Ct. 1948); *Matter of Rabinoff v. Ross*, 119 N. Y. L. J. 1918 (Sup. Ct. May 21, 1948).

<sup>16</sup> After this paper was prepared two decisions were handed down in the First Department by Mr. Justice Walter; *Matter of Lederman v. Ross*, 120 N. Y. L. J. 67 (Sup. Ct. July 13, 1948), and *Matter of Lubin v. Finkelstein*, 120 N. Y. L. J. 75 (Sup. Ct. July 14, 1948). In both of these cases orders increasing rents in hotels were upheld by the learned justice. In the first case the Commission's comparability formula was upheld, and in the second case, the Commission's hardship formula. It is interesting, however, that the opinion of Mr. Justice Walter in the second case very extensively treated the powers of the Commission and compared its function with that of any public utility rate making body. Of special importance in clearing the status of the Rent Commission is the following language used by Mr. Justice Walter: "I thus hold that the commission's formula is legal, and the remaining question is whether there is evidence to sustain its findings of fact as to values and results of operation; for if there be evidence which fairly sustains its findings, I may not substitute my judgment for that of the commission or upset their order merely because if I were sitting as a trier of the facts with power to weigh the evidence I might come to a different conclusion. (Citing cases.)"

halted, and the spiral of rent increases in hotels had been stopped, it was obvious that the usefulness of the Commission as a governmental agency would not endure if the legal bases of its decisions were not established.

To accomplish this result, the Commission proceeded on two fronts: it sought, through the city administration, and procured from Albany, legislation curing the conflict which was said to have existed between the state and the local laws; and at the same time, it prosecuted appeals to the higher courts of the decisions of the courts at *nisi prius* so as to get definitive holdings with regard to its power and position as a local administrative agency.

The enabling acts<sup>17</sup> which were adopted by the state legislature specifically authorized the City Council to adopt legislation of the character here involved and ratified the acts of the City Council theretofore adopted. When the Court of Appeals finally reversed the lower courts which had declared Local Law 66 unconstitutional, it did not in terms meet the problem of the conflict between the state and the local laws.<sup>18</sup> By the time the Court of Appeals had to deal with the problem, the enabling acts were already on the books and it was not necessary to pass upon the academic question which was raised before and passed upon by the lower courts. It is, therefore, still unknown whether an emergency of the type which existed on June 30, 1947, is sufficient ground to justify a municipality in passing local laws inconsistent with state legislation. That such emergencies could exist is, of course, obvious. If a city is threatened by pestilence or flood, or other immediate danger, it seems most unlikely that it would have to await either the regular session of the legislature or a special session to deal with an immediate problem. Certainly, in such cases, private rights must yield to the public welfare, and it would be difficult to imagine that any court would enjoin the necessary conduct of the municipality on such occasions. The problem here presented was whether the particular emergency was of sufficient severity to justify the action of the City Council. That problem never was

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<sup>17</sup> Laws of N. Y. 1948, cc. 4, 669.

<sup>18</sup> *Tartaglia v. McLoughlin*, 297 N. Y. 419, 79 N. E. 2d 809 (1948).



solved because its solution was obviated by the prompt action of the state legislature in ratifying the local laws, and in approving their extension. It is submitted, however, that the emergency which confronted the city was a serious one, and the prospect of having many thousands of tenants evicted from their homes or of permitting rents to rise to unprecedented heights in a competitive market, was sufficiently serious to justify prompt measures by the local government. In presenting the case, however, to the lower courts, counsel for the administrative agency did not adequately present the seriousness of the situation, and we believe that the lower courts were misled into making decisions adverse to the Commission in the early days by inadequate factual presentations.

Local Law 54, as has been stated above, froze the rents of permanent residents in hotels at the June 30, 1947, levels.<sup>19</sup> The Commission, however, was authorized to make such orders adjusting rents as might be necessary to correct inequities. It was necessary for the Commission, therefore, under the powers conferred upon it by the City Council, to establish by regulation the inequities which would be dealt with and the formulae which would be adopted for raising rents in particular cases where such inequities existed. The exercise of these powers by the Commission proved a fertile source of disagreement between the Commission and the courts, for here, as elsewhere, some of the judges at *nisi prius* were unwilling to afford to the local Commission the status enjoyed by other administrative agencies. The Commission, therefore, had to run the gauntlet of adverse decisions in the lower courts before its authority was upheld in the appellate courts.

Four methods were adopted by the Commission for dealing with rental inequities in hotels:

- (a) It first approved voluntary increases of rent to the extent of 15% by agreements between the landlord and tenant. The agreements were required to be accompanied by a signed statement in which the tenant certified that his consent was willingly given

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<sup>19</sup> See note 8 *supra*.

and not as the result of coercion, and the tenant was to be given the right to remain in possession for at least the period of one year;<sup>20</sup>

- (b) An application could be made to the Commission for a general increase in rent on a showing by the landlord of hardship, which the Commission justified as a failure of the landlord to earn a return of 6% on the fair value of the property. In determining the fair value, the Commission was initially guided by the value as fixed by the courts for local real estate taxes;<sup>21</sup>
- (c) Particular tenants were made the subject of possible applications for rent increases where the rents paid by them were out of line or considerably lower than the other frozen rents in the same building for like accommodations;<sup>22</sup> and finally
- (d) Any special inequities which a landlord might present to the Commission could form the basis of an application for a rent increase.<sup>23</sup>

Numerous applications on each of these grounds were promptly filed with the Commission. The Commission employed a staff of auditors whose duty it was to check the records submitted by the hotels for the purpose of providing the Commission with information that was needed intelligently to pass upon these applications. The tenants were given an opportunity to examine the records of the Commission and to file, in writing, any objections that they might have, and these too were presented to the Commission for consideration.

In a number of cases, as a result of this procedure, increases in rent were ordered by the Commission. As a rule, such increases did not exceed the 15% but in some instances

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<sup>20</sup> Form RC4 (Appendix A).

<sup>21</sup> Form RC5-b (Appendix B).

<sup>22</sup> Form RC5-a (Appendix C).

<sup>23</sup> Form RC5-c (Appendix D).

greater increases were justified by the records and orders granting them were made by the Commission.<sup>24</sup>

In the first case dealing in any comprehensive way with the authority of the Commission to make such orders, a judge at *nisi prius* set aside the order of the Commission on numerous grounds.<sup>25</sup> A close examination of the opinion of the court in that case indicates serious impatience by the court with the procedure adopted by the Commission and an unwillingness by the court to recognize that the primary responsibility for such orders was with the administrative agency, and that its orders should not be set aside unless clearly unreasonable or arbitrary. The case involved the Hotel Martinique, which found itself in serious financial hardship. It was not even earning enough to pay its running expenses and special concessions had to be made to it even by labor unions and the mortgage owner.

In the wake of this decision, the same judge, and others,<sup>26</sup> likewise found fault with the Commission's formulae and with its exercise of administrative discretion. As this paper goes to press, however, the Appellate Division in the First Department unanimously upheld the Commission's power and procedure in these cases, giving to the administrative agency the full rights and powers which other administrative agencies have enjoyed in recent years by holding that its orders should not be set aside unless they are clearly arbitrary or unreasonable.<sup>27</sup> Should the opinion of the Appellate Division of the First Department be upheld, it would mean that the local administrative agency has the power to adopt reasonable formulae for adjusting inequities not incompatible with the public welfare, and that its orders will be sustained even though the courts might be of the opin-

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<sup>24</sup> Out of a total of 60 applications made by hotels, 55 of which asked for increases over 15%, 26 were denied, 15 were granted an increase of 15% or less; 1 was granted an increase of 40%; 1 granted an increase of 30%; 11 granted an increase ranging from 20 to 29%; and 6 were granted an increase of 16 to 19%.

<sup>25</sup> See note 14 *supra*.

<sup>26</sup> *Arnoff v. Ross*, 191 Misc. 469, 78 N. Y. S. 2d 425 (Sup. Ct. 1948); *Beekman v. Ross*, — Misc. —, 78 N. Y. S. 2d 422 (Sup. Ct. 1948).

<sup>27</sup> *Moukad v. Ross*, — App. Div. —, — N. Y. S. 2d —, 119 N. Y. L. J. 2359 (1st Dep't June 23, 1948).

ion that the particular order was unwise and that the particular inequity should have been dealt with differently.

It is not feasible, in this brief review of the Commission's activities, to deal with the many specific problems which have arisen with regard to the decisions of the Commission in eviction cases. It will be sufficient to take one example and indicate how the courts have dealt with the Commission's determinations in these matters.

Among the grounds upon which the Commission is directed to issue a certificate of eviction is the claim that the owner of the apartment desires to evict the tenant in order to occupy the premises himself. Certain safeguards were thrown around the tenant by the statute, but in the main it was left to the Commission to determine whether the applicant bona fide intended or needed the apartment for its own use.<sup>28</sup> In its regulations, the Commission had stated that it would not grant the petition unless the landlord could show a compelling necessity<sup>29</sup> for the use of the premises and the Commission uniformly, in its interpretations, had held that a compelling necessity meant that the landlord was then living under very adverse circumstances himself and that merely showing that the landlord owned the premises and preferred to live in the apartment of one of the tenants rather than in the apartment in which he was then living was insufficient. This regulation met with adverse rulings by the lower courts.<sup>30</sup> It was generally found that the original

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<sup>28</sup> In Local Laws 1947 (City of New York), No. 66, § U41-7.0(6i), the landlord or purchaser seeking to evict a tenant was required to have paid the seller, in cash, at least 20% of the purchase price or 20% of the assessed value of the land together with the structure thereon, whichever was the greater.

<sup>29</sup> While the original Local Law No. 66 did not in *haec verba* require the showing of immediate and compelling necessity, the Commission nevertheless held that this requirement was implicit, if the City's emergency were to be met.

<sup>30</sup> *In re Pruden*, 119 N. Y. L. J. 487 (Sup. Ct. February 6, 1948); *Matter of Olsen v. Ross*, 119 N. Y. L. J. 646 (Sup. Ct. February 19, 1948); *Matter of Lawrence v. Ross*, 191 Misc. 88, 77 N. Y. S. 2d 540 (Sup. Ct. 1948); *Matter of Wallach v. Ross*, 119 N. Y. L. J. 1034 (Sup. Ct. March 19, 1948); *Matter of Roeder v. Ross*, 119 N. Y. L. J. 1065 (Sup. Ct. March 23, 1948); *Skolnick v. Ross*, 119 N. Y. L. J. 1278 (Sup. Ct. April 7, 1948); *Matter of Lobas v. Ross*, 119 N. Y. L. J. 1362 (Sup. Ct. April 13, 1948); *Pinsky v. Ross*, 119 N. Y. L. J. 1503 (Sup. Ct. April 22, 1948); *Matter of Uriani v. Ross*, 119 N. Y. L. J. 1641 (Sup. Ct. May 3, 1948); *In re Schroeder* (Finkelstein), 119 N. Y. L. J. 1662 (Sup. Ct. May 4, 1948). *But cf.* *Matter of Quattromani v. Ross*, 119 N. Y. L. J. 882 (Sup. Ct. March 9, 1948).

statute did not authorize the Commission to do any more than to inquire if the applicant really owned the property and had met the statutory prerequisites. If he had, the Commission, said some of the courts, was not authorized to deny the certificate.<sup>31</sup>

As the application of this rule of law would have resulted in many thousands of evictions, not socially necessary or desirable, the City Council amended the statute so as to provide, in express language, that in order to secure a certificate of eviction from the Commission, the landlord must show an immediate and compelling necessity to occupy the demised premises.<sup>32</sup> The Commission, therefore, was given the task of determining in each case whether the applicant's needs were sufficiently great or urgent to require the eviction of the tenant.

The problems of the Commission were, however, not yet resolved by this amended statute for the courts immediately, in three cases, held the new Act to be unconstitutional, in conflict with state legislation and not applicable retroactively.<sup>33</sup>

Again, resort was had to the state legislature for the passage of enabling legislation to validate the amended Local Law<sup>34</sup> and again the Appellate Division, in three decisions simultaneously handed down,<sup>35</sup> reversed the courts at *nisi prius* and upheld the right of the Commission to pass upon the immediate and compelling necessity of the landlord to occupy the apartment from which he sought to evict the tenant. Perhaps the best reasoned judicial opinion and the most illuminating discussion of the problem is contained in the opinion of the Appellate Division, in the First Depart-

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<sup>31</sup> *Ibid.*

<sup>32</sup> Local Laws 1947 (City of New York), No. 766, § U41-7.0(c), as amended, Local Laws 1948 (City of New York), No. 12.

<sup>33</sup> *Matter of Olsen v. Ross*, 119 N. Y. L. J. 646 (Sup. Ct. February 19, 1948); *Matter of Wallach v. Ross*, 119 N. Y. L. J. 1034 (Sup. Ct. March 19, 1948); *In re Lombardo*, 119 N. Y. L. J. 1201 (Sup. Ct. April 1, 1948).

<sup>34</sup> Laws of N. Y. 1948, c. 669.

<sup>35</sup> *Matter of Olsen v. Ross*, 119 N. Y. L. J. 1858 (App. Div. 2d Dep't May 18, 1948); *Matter of Lombardo v. Ross*, 119 N. Y. L. J. 1858 (App. Div. 2d Dep't May 18, 1948); *Matter of Wallach v. Ross*, 119 N. Y. L. J. 1858 (App. Div. 2d Dep't May 18, 1948).

ment, in *Molnar v. Curtin*,<sup>36</sup> decided March 15, 1948, the opinion being written by the very eminent jurist, Mr. Justice Shientag, and subsequently affirmed by the Court of Appeals, without opinion.<sup>37</sup> Several problems touching the validity of Local Law 66 were dealt with by the learned justice. Thus, the fact that federal legislation, in part, covered the same field,<sup>38</sup> and the problems involved in the application of the enabling acts, and the restrictive nature of the local legislation were all discussed in the opinion of the court. The law established by that opinion has served as a guide in many decisions at *nisi prius* which followed. It upheld generally the power of the City Council, under existing circumstances, with the concurrence of the state legislature to confer the powers here involved upon an administrative agency, and upheld the administrative agency in the exercise of these powers in a reasonable and non-arbitrary manner.

In all, nearly six hundred and eighty-seven applications<sup>39</sup> were brought before the Supreme Court of the state to test the validity of the Commission's orders and while the Commission was at first not successful and met stormy opposition in the courts, after the enabling acts were passed and after the various departments of the Appellate Division and the Court of Appeals had upheld its powers, the number of occasions upon which orders of the Commission have been set aside have steadily diminished and the authority of the Commission has thus been firmly established.<sup>40</sup>

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<sup>36</sup> 273 App. Div. 322, 77 N. Y. S. 2d 553 (1st Dep't 1948).

<sup>37</sup> 297 N. Y. 967, — N. E. — (1948).

<sup>38</sup> "Finally, Local Law No. 66 validated by the enactment of chapter 4 of the Laws of 1948, is not in conflict with the Federal Housing and Rent Act of 1947. The differences between the Federal law and the local law are not of such a character as to render one inconsistent with the other. . . . States and municipalities may adopt legislation dealing with the same subject as a Federal statute and designed to assist in its enforcement. . . . The present Federal law makes no provision for obtaining a certificate of eviction from the Federal rent agency as prerequisite to a proceeding for eviction under the State law. The local law now requires that such a certificate be obtained from the local rent commission. There is no doubt that the local law can be enforced without clashing with the Federal law and without in any way impairing that statute." 273 App. Div. 322, 325, 77 N. Y. S. 2d 553, 557 (1st Dep't 1948).

<sup>39</sup> From December 7, 1947 to June 30, 1948, this number of applications was brought before the court on mandamus proceedings (N. Y. Crv. Prac. Acr Art. 78, §§ 1283-1306).

<sup>40</sup> June 1 to June 15, 1948, statistics show that out of 66 petitions to review

It would exceed the bounds of this paper to enter into a detailed discussion of these numerous cases. One point, however, deserves special attention, and that is the obligation of the Commission to grant oral hearings to tenants who request them. The Commission has adopted the principle of permitting tenants to file objections, in writing, after affording them an opportunity to examine the material in the hands of the Commission upon which the application is based, but it has reserved to itself the right to refuse an oral hearing where, in its judgment, such a hearing is neither required nor feasible.<sup>41</sup> Obviously, where a hotel is applying for an adjustment of rents and several hundred tenants are involved, it would not be feasible to hold an oral hearing, subjecting the parties to examination and cross-examination which might endlessly prolong and postpone the determination. This is especially true when the issues of fact to be determined are matters of bookkeeping and where the Commission itself has at its command a staff of impartial accountants to check the facts. Nevertheless, the failure to grant such oral hearings was made one of the bases for setting aside the Commission's orders in at least two cases,<sup>42</sup> one of which has already been reversed by the Appellate Division of the First Department,<sup>43</sup> which specifically held that under the circumstances oral hearings were not required.<sup>44</sup> Likewise, the better view is that the Commission

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the Commission's orders, 23 were voluntarily withdrawn; in 2 cases the Commission, on its own order, changed its decisions; 28 were denied or dismissed by the Court; 2 were granted by the Court. There are still 11 pending or open cases.

<sup>41</sup> Regulation II, Article II, Section 6d—The Commission may direct the holding of hearings with regard to any application before it or a deputy appointed by it, if in its judgment such hearings are necessary.

<sup>42</sup> *Moukad v. Ross*, 191 Misc. 270, 77 N. Y. S. 2d 672 (Sup. Ct. 1948); *Beekman v. Ross*, — Misc. —, 78 N. Y. S. 2d 422 (Sup. Ct. 1948).

<sup>43</sup> *Moukad v. Ross*, — App. Div. —, — N. Y. S. 2d —, 119 N. Y. L. J. 2359 (1st Dep't June 23, 1948).

<sup>44</sup> "The Commission is an administrative agency, and in its consideration of the application of the Hotel Martinique Inc., for an increase in the rent of controlled rooms, it acted in an administrative capacity. The Commission, in this respect at least, was not acting in a judicial capacity or as a quasi-judicial body, and it was not necessary, therefore, that the Commission hold a hearing as between the Hotel and the tenants." — App. Div. —, — N. Y. S. 2d —, 119 N. Y. L. J. 2359 (1st Dep't June 23, 1948).

is not required to hold oral hearings in eviction cases;<sup>45</sup> but in these cases, where the parties are few and the issues are simple, the Commission does generally have oral hearings before hearing officers, wherever issues of fact are raised by the parties which require quasi-judicial determination by the Commission.

A governmental body, organized to meet a specific emergency and designed to cope with a problem which is essentially economic rather than legal, and to deal with rights which are newly created and do not have the authority of tradition, and which is not equipped with a body of case law stemming from the ancient books, is of necessity an imperfect creature. Its errors may be numerous and the courts must be alert to check any excesses which such a hastily organized body may from time to time commit. But the smooth operation of government here, as elsewhere, requires that administrative agents, whose function is to make speedy judgments on matters within the range of expert knowledge, should be accorded the basic rights and privileges of all administrative agencies. A complicated society like ours could hardly function if the air-tight separation of powers into judicial, executive and legislative were strictly adhered to. Time has shown that it is often necessary to fuse these powers into temporary and permanent agencies, and thus has grown up the great body of administrative law with which this century has become so familiar. The Temporary City Housing Rent Commission, established by the City of New York to meet a grave crisis in the affairs of the city, is a conspicuous example of this governmental process.

MAURICE FINKELSTEIN.

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<sup>45</sup> "Local Law 66, constituting section U41-7.0, subdivision M, which was validated by Chapter 699 of the Laws of 1948, gives the commission the power to adopt, promulgate, amend or rescind such rules, regulations or orders as the commission may deem necessary or proper to effectuate the purposes of this section. Pursuant to such provision of the law, the commission adopted subdivision D of section 2 of their rules and regulations, which provides: 'The commission may direct the holding of oral hearing with regard to any application before it or a deputy appointed by it if in its judgment such hearings are necessary.' It would, therefore, seem entirely within the discretion of the commission as to whether a hearing should be had . . ." Norton, J., *Friedland v. Ross*, 119 N. Y. L. J. 1859 (Sup. Ct. May 18, 1948).



## ( APPENDIX A )

Form No. RC4

Temporary City Housing Rent Commission  
500 Park Avenue  
New York City

## APPLICATION FOR ADJUSTMENT (VOLUNTARY)

Name of Establishment  
Address  
Name of Landlord  
Name of Person in charge  
Name of Tenant  
Room or Apartment  
Number.....

Zone Number

The undersigned Landlord hereby applies for an adjustment of rent.  
This application is based upon the following inequities, to wit:  
(Here state briefly grounds for application for adjustment.)

Rent for above room or apartment paid on June 30, 1947  
\$..... per

Rent after voluntary agreement \$..... per  
The increased rent is embodied in a lease dated and expiring not earlier than  
December 31, 1948, a copy of which is hereto attached.

.....Landlord

The undersigned represent that the agreement to pay the above increased  
rent was voluntarily negotiated and entered into without coercion or duress  
of any kind whatsoever.

.....Landlord

.....Tenant

(Note: This application will not be considered unless the lease is for a period  
expiring not earlier than December 31, 1948, at the option of the Tenant and  
expressly provides the same service afforded to the Tenant by the Landlord  
as of June 30, 1947. The Commission may, if the facts warrant, institute  
proceedings, after notice to the Landlord and Tenant, to reduce the rent to  
that in effect on June 30, 1947.)

## ( APPENDIX B )

Form No. RC5-b

## TEMPORARY CITY HOUSING RENT COMMISSION

500 Park Avenue  
New York 22, N. Y.

## APPLICATION FOR ADJUSTMENT (HARDSHIP)

Date.....

Name of Establishment

Address

Name of Landlord

Name of Person in Charge

The undersigned Landlord hereby applies for adjustment of rents, to be effective on ..... on the ground that the rents it presently receives do not afford a reasonable return on the fair value of the investment in the hotel property.

In support of this application Landlord submits the following summary:

1. Fair value of investment in hotel property  
(From Statement A) \$.....
2. Amount of reasonable return on above value  
claimed (From Statement B) \$.....
3. Profit or loss earned on the basis of maximum  
rents now in effect, as adjusted in accordance  
with Statement D \$.....
4. Excess of Item 2 over Item 3 \$.....
5. Amount of adjustment applied for \$.....
6. The total annual maximum rents of Tenants  
whose rents are to be adjusted (From  
Statement F) \$.....

In further support of this application, Landlord submits the following statements:

## SCHEDULE OF STATEMENTS

STATEMENT A. Proof of fair value of the investment, including land, building, furniture and working capital. (The assessed value will be accepted as prima facie evidence of the fair value of land and building.)

STATEMENT B. Proof of amount of reasonable return on the fair value of the investment. (Six per centum will be accepted as a reasonable rate of return without further proof.)

STATEMENT C. Comparative Profit and Loss Summary (1) for the last fiscal year, (2) for the current fiscal year to the end of a month ended not more than 60 days prior to the date of application, and (3) for the corresponding months of the preceding fiscal year. (These statements shall be in sufficient detail to show separately each major classification of sales and income, cost of sales, and expenses. Repairs and maintenance, real estate taxes, depreciation

## (Reverse side of APPENDIX B)

of building, and depreciation of furniture and furnishings must be shown separately.)

STATEMENT D. Profit or loss earned on the basis of maximum rents now in effect. The profit or loss after depreciation but before deduction of interest charges and Federal income taxes, taken from the profit and loss statement for the last fiscal year, and all known adjustments claimed, such as present trend indicated in Statement C, changes in wage rates and in taxes. (Each adjustment must be supported by proper proof.)

STATEMENT E. Proof of reasonableness of deductions for repairs and maintenance and for depreciation. (As to repairs and maintenance, show this expense for each of last five years, analyzed in the same manner as in the books of account. If the deduction in Statement C is not adjusted in Statement D, and if it is substantially different from the average for preceding years, explain. As to depreciation, if the basis used in Statement C is not adjusted in Statement D, explain the basis used and state the basis used in Federal income tax returns and whether or not such basis was accepted as a result of an examination of the returns.)

STATEMENT F. Proposed apportionment of the rent adjustment applied for. (Show, as to each room or apartment (1) number of room or apartment, (2) name of tenant, (3) last date on which maximum rent under FEDERAL control was effective, (4) amount of last ORC (Federal) maximum rate, (5) maximum rate at June 30, 1947, (6) maximum rate at date of this application, (7) proposed maximum rate.

STATEMENT G. Proof that the maximum rents, after giving effect to the adjustment applied for, will not exceed the rents actually received for comparable rooms or apartments from occupants whose rents are not under the control of this Commission. (Submit list of all rooms or apartments not under control of this Commission and show, as to each, (1) room or apartment number, (2) last date on which ORC maximum rent was in effect, (3) amount of last ORC maximum rent, (4) maximum rate at June 30, 1947, (5) highest adjusted maximum rate approved by this Commission, and (6) actual rate received at a date not more than 30 days prior to this application. (Submit also such explanations as will facilitate making comparisons between adjusted rents applied for and actual rents received for rooms or apartments not under control.)

Landlord is willing to execute a lease for each Tenant whose rent will be increased at least 15% as a result of this application. Such lease shall be for a term ending on a date to be determined by the Commission at the time the increase is granted, but not later than December 31, 1948, and it shall expressly provide that Landlord will maintain the services afforded to the Tenant by the Landlord as of June 30, 1947.

.....  
Landlord

By

.....  
Official Title .....

## (APPENDIX C)

Form No. RC5-a

File two  
copies of  
this applica-  
tion with  
the CommissionAPPLICATION FOR ADJUSTMENT (COMPARABILITY)

Date.....

Name of Establishment..... Date Rec'd .....

Address ..... Date Notices Mailed: .....

Name of Landlord.....

Name of Person in Charge.....

The undersigned Landlord hereby applies for adjustment of rents as listed in Schedule A below, to be effective on ..... on the ground that these Tenants pay lower rents than the maximum rents of other Tenants who occupy similar rooms (or apartments):

SCHEDULE A. (Fill in number of persons only if it affects amount of rent.)

Room or Apt. No.	Name of Tenant	No. of Pers.	Present Maximum Rent		Adjusted Maximum Rent Applied for			Lease to (Date)
			\$	Per	—\$	\$	Allowed Effective date	

In support of this application Landlord submits the information contained in Schedules B and C. Landlord represents that the rooms (or apartments) listed in Schedules A and B have the same, or larger, floor area, the same or better arrangement and conveniences, and are at least as desirable as to outlook, furnishings, and physical condition, as those listed in Schedule C. Landlord further represents that there are no rooms (or apartments) in this establishment similar to those listed in Schedules A and B except those listed in Schedule C.

Landlord is willing to execute a lease for each Tenant whose rent will be increased at least 15% as a result of this application. Such lease shall be for a term ending on a date to be determined by the Commission at the time the increase is granted, but not later than December 31, 1948, and it shall expressly provide that Landlord will maintain the services afforded to the Tenant by the Landlord as of June 30, 1947.

Approved by the Commission as indicated in the last three columns of Schedule A.  
Date: \_\_\_\_\_ By: \_\_\_\_\_ Landlord

\_\_\_\_\_  
(Title) \_\_\_\_\_ Official Title

(Reverse side of 'APPENDIX C)

**SCHEDULE B.** Additional information as to rooms (or apartments) listed in Schedule A.

[illegible]

NOTE: Fill in No. of Persons only if it affects amount of rent.

**SCHEDULE C. Information as to similar rooms (or apartments):**

[illegible]

REMARKS:

## ( APPENDIX D )

Form No. RC5-c

## APPLICATION FOR ADJUSTMENT (INEQUITY)

File Two Copies
--------------------

Date.....

Name of Establishment  
Address  
Name of Landlord  
Name of Person in Charge

Date Notices Mailed
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The undersigned Landlord hereby applies for adjustment of rents, to be effective on ..... on the ground that the rents it presently receives are inequitable.

In support of this application Landlord submits the following summary:

1. The total annual maximum rents of Tenants whose rents are to be adjusted (From Statement A) \$.....
2. Total amount of adjustment applied for (From Statement A) \$.....
3. A concise statement of the inequity on which Landlord relies as the basis for this application:

In further support of this application, Landlord submits the following statements:

STATEMENT A. Proposed apportionment of the rent adjustment applied for. (Show, as to each room or apartment (1) number of room or apartment, (2) name of tenant, (3) furnished or unfurnished, (4) last date on which maximum rent under FEDERAL control was effective, (5) amount of last ORC (Federal) maximum rate, (6) maximum rate at June 30, 1947, (7) maximum rate at date of this application, (8) proposed maximum rate.

STATEMENT B. A complete and detailed statement of the inequity on which Landlord relies as the basis for this application. (Inclusion of proof of the facts submitted in this statement will avoid delay in processing the application.)

Landlord is willing to comply with the terms and conditions prescribed by the Order of the Commission with respect to this application.

.....  
Landlord

By .....

Official Title .....